

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
)
)
 V.) ID # 0107007736
)
 MILES E. BRICE)
)
 Defendant.)

Submitted: August 9, 2017
Decided: November 30, 2017

*Upon Defendant's Motion for Postconviction Relief, **SUMMARILY DISMISSED.***
*Upon Defendant's Motion for Appointment of Counsel, **DENIED.***

OPINION

Sean Lugg, State Prosecutor, Department of Justice, 820 North French Street Wilmington, DE 19801, *Attorney for the State.*

Miles E. Brice, SBI No. 330563, James T. Vaughn Correctional Center, 1181 Paddock Road, Smyrna, Delaware 19977, *pro se.*

Brady, J.

I. INTRODUCTION & PROCEDURAL HISTORY

Before the Court is a Motion for Postconviction Relief and a Motion for Appointment of Counsel pursuant to Superior Court Criminal Rule 61 (“Rule 61”) filed by Miles E. Brice (“Defendant”) on August 9, 2017. Defendant has previously filed six Motions for Postconviction Relief, all of which were denied or summarily dismissed. The Defendant alleges a retroactively applicable right that is newly recognized. Defendant contends the issues asserted in his postconviction Motion are complex and requests the Court to appoint counsel.

In July 2001, the grand jury indicted the Defendant, charging him with two counts of Felony Murder in the First Degree, two counts of Attempted Burglary in the Second Degree, one count of Attempted Murder in the First Degree, one count of Assault in the Second Degree, one count of Conspiracy in the First Degree, five counts of Reckless Endangering in the First Degree, and a number of related weapon offenses.¹ Trial began on December 2, 2003. The State presented evidence that, in July 2001, Defendant and a co-defendant chased an individual with whom Defendant had a feud into an apartment. Defendant and the co-defendant tried to force their way into the apartment, and Defendant, who was carrying a semi-automatic handgun, fired eleven bullets through the door, killing two individuals as well as injuring a third. After the State presented its case-in-chief, the Defendant pleaded guilty to two counts of Felony Murder in the First Degree in exchange for which the State dismissed the remaining charges and refrained from seeking the death penalty. Defendant was subsequently sentenced to two life terms. He did not file a direct appeal from his convictions or sentences.

Defendant filed his first Motion for Postconviction Relief in January 2008. The Court summarily dismissed the Motion² and Defendant appealed. The Supreme Court affirmed this

¹ *Brice v. State*, 992 A.2d 1236, at *1 (2010).

² *State v. Brice*, 2009 WL 477302 (Del. Super. Feb. 26, 2009).

Court's denial, finding Defendant's first Motion was time-barred pursuant to Rule 61(i)(1), and further, that Defendant failed to establish a "fundamental fairness" exception.³ Defendant filed a second Motion for Postconviction Relief on April 30, 2010, asserting claims of ineffective assistance of counsel based on trial counsel's alleged failure to inform Defendant of the "new" interpretation of Delaware's Felony Murder statute. The Court denied Defendant's second Motion on the ground it was procedurally barred by Rule 61(i)(4).⁴ Defendant appealed and the Delaware Supreme Court affirmed the denial on January 18, 2012.⁵

Defendant filed his third Motion for Postconviction Relief on February 10, 2012. The Court found that Defendant's claim was merely repackaging the same issue which the Court had previously addressed, and summarily dismissed the Motion.⁶ The Delaware Supreme Court affirmed.⁷ Defendant's fourth Motion for Postconviction Relief was also summarily dismissed, finding his claims were procedurally barred,⁸ and that dismissal was also affirmed by the Delaware Supreme Court.⁹

On November 6, 2013, Defendant filed his fifth Motion for Postconviction Relief asserting several new claims of trial counsel ineffectiveness. The Court denied the Motion on February 26, 2014.¹⁰ The Delaware Supreme Court, again, affirmed.¹¹ Defendant filed his sixth Motion for Postconviction Relief and Motion for Appointment of Counsel on February 13, 2017.

³ *Brice v. State*, 992 A.2d 1236, 2010 WL 1408304 (Del. 2010).

⁴ *State v. Brice*, ID. 0107007736, Docket 109 (Feb. 10, 2011), adopting the Commissioner's Report and Recommendation dated Dec. 9, 2010.

⁵ *Brice v. State*, 36 A.3d 348, 2012 WL 162024 (Del. 2012).

⁶ *State v. Brice*, ID. 0107007736, Docket 138 (May 23, 2012), adopting the Commissioner's Report and Recommendation dated April 10, 2012.

⁷ *Brice v. State*, 54 A.3d 256, 2012 WL 4880671 (Del. 2012).

⁸ *State v. Brice*, ID. 0107007736, Docket 148 (Feb. 21, 2013), adopting the Commissioner's Report and Recommendation dated Jan. 24, 2015.

⁹ *Brice v. State*, 67 A.3d 1022, 2013 WL 2316558 (Del. 2013).

¹⁰ *State v. Brice*, 2014 WL 934384 (Del. Super. Feb. 26, 2014).

¹¹ *Brice v. State*, 93 A.3d 653, 2014 WL 2521397 (Del. 2014).

The Court summarily dismissed Defendant's Motion for Postconviction Relief, finding that Defendant failed to meet the pleading standard enumerated in Rule 61(d)(2), by failing to plead with particularity that new evidence exists that creates a strong inference of actual innocence or that a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or the Delaware Supreme Court, applies to his case and renders the conviction invalid.¹² Defendant did not file an appeal of that decision.

On August 1, 2017, Defendant filed the current *pro se* Motion for Postconviction Relief. He claims that the decision, made on August 2, 2016 by the Delaware Supreme Court, holding the Delaware death penalty statute unconstitutional, had retroactive effect over Defendant's decision to enter a guilty plea in 2003. On August 9, 2017, Defendant filed a *pro se* Memorandum of Law in support of his Motion, and a Motion for Appointment of Counsel. Defendant claims that had the death penalty been unconstitutional in 2003, he "would not have pled guilty to a charge where he would receive no benefit, but would have insisted on completing his trial."¹³ This is the Court's decision.

II. DEFENDANT'S CLAIM

Defendant claims the ruling in *Rauf v. State* is retroactively applicable to him. In *Rauf*, the Delaware Supreme Court held the Delaware death penalty statute unconstitutional because the statute allowed the sentencing judge to independently find the existence of any aggravating circumstance for weighing in the penalty phase of a capital sentencing proceeding.¹⁴ Defendant contends that had the death penalty statute been ruled unconstitutional in 2003, when he took a plea to avoid the death penalty, he would not have taken the plea.

¹² *State v. Brice*, ID. 0107007736, Docket 165 (Apr. 10, 2017).

¹³ Mem. of Law in Support of Def.'s Rule 61 Mot. for Relief, at 4 (Aug. 9, 2017).

¹⁴ *Rauf v. State*, 145 A.3d 430 (Del. 2016).

III. DISCUSSION

A. Procedural Bars

Before addressing the merits of Defendant's claims, the Court must apply the procedural bars set forth in Superior Court Criminal Rule 61(i) in effect at the time the motion was filed.¹⁵ Pursuant to that version of Rule 61, this Court must reject a motion for postconviction relief if it is procedurally barred. The Rule provides that a motion is procedurally barred if the motion is untimely, repetitive, a procedural default exists, or the claim has been formerly adjudicated. The Rule states that no second or subsequent motion is permitted unless it satisfies the pleading requirements set in subparagraphs (2)(i) or (2)(ii) of Rule 61(d), which provides, in relevant part:

- (2) A second or subsequent motion under this rule shall be summarily dismissed, unless the movant was convicted after a trial and the motion either:
 - (i) pleads with particularity that new evidence exists that creates a strong inference that the movant is actually innocent in fact of the acts underlying the charges of which he was convicted; or
 - (ii) pleads with particularity a claim that a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or the Delaware Supreme Court, applies to the movant's case and renders the conviction or death sentence invalid.¹⁶

Rule 61(i)(1) provides that a motion for Postconviction relief is time barred when it is filed more than one year after the conviction has become final or one year after a retroactively applied right has been newly recognized by the United States Supreme Court or by the Delaware Supreme Court.

Defendant has previously filed six Motions for Postconviction Relief, all of which were denied or summarily dismissed by this Court. The Delaware Supreme Court affirmed each denial and dismissal that the Defendant has appealed. All of the procedural bars of Rule 61(i) apply to Defendant's Motion. Even if the Court decides to consider the Defendant's claim on the

¹⁵ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

¹⁶ Super. Ct. Crim. R. 61(d)(2).

merits, Defendant's Motion is nonetheless time barred because it was filed more than one year after the Supreme Court recognized the retroactive right. *Rauf* was decided on August 2, 2016, and Defendant filed this Motion on August 9, 2017.

For reasons discussed herein, Defendant's current claim does not meet the requisites of Rule 61(d)(2), and he is not entitled to appointment of counsel.¹⁷

B. Defendant's Claim

Notwithstanding the procedural bars, this Court may consider a motion that otherwise is barred if the motion satisfies the pleading requirements set forth in Rule 61 (d)(2). Rule 61(d)(2) provides that a second or subsequent motion for Postconviction relief shall be summarily dismissed unless the movant was convicted *after a trial* and the motion satisfies the pleading requirements of subsections (2)(i) or (2)(ii).¹⁸ The instant Motion, being Defendant's seventh one, following a *guilty plea*, is subject to summary dismissal under Rule 61(d)(2).

Even if the Court did not summarily dismiss Defendant's Motion, the Court finds no merit to Defendant's claim. Defendant contends that because the Delaware Supreme Court ruled the death penalty statute was unconstitutional in 2016, it retroactively applies to Defendant's case in 2003, when Defendant accepted a guilty plea in exchange for the State's agreement not to seek the death penalty. Defendant argues that had the death penalty statute been ruled unconstitutional back in 2003, he would not have taken the plea. The Court finds no merit to Defendant's claim.

The Delaware Supreme Court's ruling in *Rauf v. State*¹⁹ has a retroactive effect on death penalty cases in which the defendant's death sentence had been imposed before *Rauf* was

¹⁷ Super. Ct. Crim. R. 61(e)(5).

¹⁸ Super. Ct. Crim. R. 61(d)(2)(i), (ii).

¹⁹ *Rauf v. State*, 145 A.3d. 430 (Del. 2016).

decided.²⁰ However, there is no legal basis that would be retroactively apply the holding in *Rauf* to Defendant’s claim here. No person could foresee that the Delaware death penalty statute would be deemed unconstitutional thirteen years after Defendant decided to plead guilty in order to avoid the then legal death penalty applicable to the Defendant. Defendant’s decision to plead guilty after the State’s case-in-chief was made after considering the applicable law at the time.

The Court draws a parallel from United States District Court decision in analyzing the applicability of *Rauf* to Defendant’s case. The United States District Court held in *U.S. v. Patterson*,²¹ that a criminal defendant is subject to the statutory ‘penalty, forfeiture, or liability’ in place at the time he commits the offense—and therefore does not benefit from a subsequently-enacted reduction—‘unless the repealing Act... expressly provide[s]’ otherwise.’²² Similarly applied to Defendant’s case here, at the time the Defendant committed the murders, the statutory penalty applicable to him was death. The Defendant was subject to the death penalty if convicted by a jury trial. His decision to enter a plea to avoid the death penalty was based on sound, applicable law in effect at that time.

C. CONCLUSION

For the foregoing reasons, Defendant’s Motion for Postconviction Relief is **SUMMARILY DISMISSED**. Defendant’s Motion for Appointment of Counsel is **DENIED**. **IT IS SO ORDERED.**

M. Jane Brady
Superior Court Judge

²⁰ *Powell v. Delaware*, 153 A.3d 69 (Del. 2016).

²¹ *U.S. v. Patterson*, 2010 WL 5480838 (S.D.N.Y. Dec. 30, 2010).

²² *Id.* *1.